

REMARKS

Applicant requests reconsideration of the rejections advanced in the Official action mailed 09/09/2004, for reasons explained below.

Regarding the amendments, please note:

The language reciting that the stress of the watercraft on the ramp is distributed on the rails is supported at page 21 of the application where the merit for this is specified to be great stability for docking and launching watercraft. (The point of this amendment arises because of the Examiner's restructuring of Graf — a restructuring that applicant submits is lacking in foundation and also erroneous.)

The language dealing with resting the footprint stabilizing bar on the earth of the shore is supported at the first half of page 16 of the specification; and the language dealing with the transverse stabilizing bar extending laterally outward from the watercraft is supported dramatically by the drawings of the application.

Claim 11 has been split into two claims, namely claims 11 and 12 to make sure of clarity.

Regarding claim 13, the support is at the bottom of page 16; and regarding claim 14, the support is at a plurality of locations in the specification as well as in the drawings.

SECTION 103 REJECTIONS

All of the rejections of the Official Action are under Section 103(a) and employ

a base combination of Graf (3, 587,874) in view of Robinson (5,671,693).

We should first look at what Graf and Robinson actually teach.

Re Graf 3,587,874

The Official Action alleges that Graf teaches a pair of rails 11 braced in parallel laterally spaced apart relationship by bolts 14, 15. Actually, the elements called rails 11 in the Official Action are called 2 x 4 longitudinals 11 by Graf; and these longitudinals do nothing more than serve as the sides of a trough for a keel to roll upon keel-supporting rollers at the bottom of the trough. The bolts 14 of Graf are nothing more than axes for a series of keel-supporting rollers 15. The so-called "spacing apart" in Graf is done by a 2 x 4 12, which Graf supports between the longitudinals 11 and uses bolts 13 (see FIG. 2 of Graf and column 2, lines 9 through 12) that extend transversely through the three longitudinal members (the two numbered 11 and the one numbered 12) to hold them together. Thus, there is no parallel laterally spaced apart relationship created by bolts. It is the third 2 x 4 numbered 12 of Graf that serves as a spacer and the bolts 13 hold that 2 x 4 in position to space — whereas bolts 14 function as axes for the Graf keel rollers 15. In short, the Official Action improperly (and without any basis) re-engineers Graf.

Another thing about Graf as discussed in the Official Action is the confusing re-engineering created by suggesting that footing members 26, 26a and 26b are all mounted to the underside of the 2 x 4's 11 called rails in the Official Action. Nothing could be further from the truth. Graf discusses his footing members 26, 26a and 26b in column 2, line 30 et seq.

and at the remaining portion of the paragraph at the top of column 3. What Graf teaches is footing members (26, 26a, and 26b) that have rollers 28 mounted in spaced condition on each footing member. Those rollers serve as supports for rolling the 2 x 4's 11 over the footing members to various positions, namely the in-use position illustrated in FIG. 2 and the winter storage position illustrated in FIG. 3. The re-engineering of Graf as done in the Official Action totally lacks foundation in fact.

The Official Action refers to Graf's water end stabilizer 23. The very nature of Graf's design requires stabilizing action at the water end and only at that end. Nothing in Graf suggests otherwise.

Graf's requirements for rolling his keel roller assembly of 2 x 4's over foundation points (i.e., footings) to create a use condition as in FIG. 2 and a storage condition as in FIG. 3 precludes any suggestion that the footing members 26 or 26a or 26b can in any way be rigidly united with the underside of any longitudinals 11 of Graf — and Graf totally lacks any concept of rails on which the stress of a watercraft on rails is distributed. Graf's longitudinals 11 never function as rails in the Graf teaching.

In short, the usefulness of Graf's teaching is totally destroyed if one were to mount Graf's footing members 26 or 26a or 26b in a rigid relationship to the underside of Graf's longitudinal 2 x 4's 11, as asserted in the Official Action. Such an assertion as in the Official Action comes from hindsight wisdom improperly using applicant's teaching itself against applicant.

Re Robinson 5,671,693

Robinson deals with docking a pontoon boat in floating condition to a dock, and for that purpose, uses two dock-mounted spacers for attaching the pontoons. Each spacer 26 is equipped with a pair of bosses 40 and 42 (see column 4 at lines 9–12 of Robinson, and note FIG. 1 of Robinson) separated approximately by 6 to 8 inches.

The Official Action, however, alleges that Robinson's mooring system has leg portions 54 and 60 (as shown in FIG. 2) and that these leg portions are parallel to one another and separated by approximately 6 to 8 inches, which according to the Official Action is recited at column 4, lines 20–25 of Robinson. The Examiner is asked to reread the whole of column 4 and recognize that the 6 to 8 inch spacing is for elements of one spacer of Robinson. Most emphatically, the 6 to 8 inch distance is not the distance between Robinson's mooring spacers. The Official Action calls attention to Robinson's mooring system that has two spacers each of which has leg portions and bosses that are spaced 6 to 8 inches apart. A simple check on the drawing of Robinson indicates that the space of 6 to 8 inches deals with fragments of a single Robinson spacer that has a triangular arrangement totally unrelated to anything conceivably pertinent to the claims of this application.

As a practical matter, Robinson is totally unrelated and non-analogous art (as Graf also is).

The Combination of Graf and Robinson

The Official Action purports to re-engineer Graf by rigidly attaching Graf's

footing member 26b to Graf's 2 x 4 longitudinals 11, and then supporting those 2 x 4 longitudinals 11 in a spaced condition of 6 to 8 inches on Graf's brackets 27 and 28. Wow! That is a highly imaginative reconstruction and re-engineering of Graf, picking out the figure of 6 to 8 inches from thin air. And then the Official Action argues that such a modification of Graf does not destroy Graf's invention but enhances it because it permits keel rollers of greater width than the version explicitly illustrated by Graf.

It is most respectfully submitted that the distortion of Graf destroys the functions of Graf as taught by Graf. Nothing in the references suggests any possibility that the footing member 26b of Graf should ever be rigidly attached to rails 11 of Graf. To do so would destroy the functions of Graf (i.e., would destroy rolling longitudinals 11 of Graf over the rollers 28 of Graf to shift between the use condition and storage condition illustrated in FIGS. 2 and 3 of Graf). Nothing suggests uniting Graf's brackets 27 and 28 to the longitudinals 11 of Graf. Graf does not have any rails that support the stress of a watercraft moved onto them. That is clear from the FIG. 5 of Graf as well as the totality of Graf's teaching. And absolutely nothing in Graf suggests a footprint stabilizer bar rigidly mounted to the underside of longitudinals 11 and resting on the earth of the shore end.

The practical fact is that Graf and Robinson cannot be combined without flagrant destruction of each other.

Applicable Law and Logic

We all are familiar with the applicable law, but a few reminders may save

argument.

About five years ago, we were told that the actions of the Patent Office are tested on the basis of substantial evidence and avoidance of arbitrary action or action not in accordance with law — all in replacement of “clearly erroneous”. See *Dickinson v. Zurko*, 527 US 150, 50 USPQ2d 1930 (1999). Of course, fundamental principles espoused by the Court of Customs and Patent Appeals, as well as the Federal Circuit, remain in force, as stressed by *In re Lee*, 61 USPQ2d 1430, 1433–1434 (Fed. Cir. 2002):

The need for specificity pervades this authority. See e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the matter claimed”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) (“even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.”); *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination “only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references”).

As everyone also recognizes, in evaluating claims for patentability under Section 103, they must be considered as a whole. See *In re Ochai*, 37 USPQ2d 1127, 1131 (Fed. Cir. 1995); *W. L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 309 (Fed. Cir. 1983), *cert. denied*, 469 US 851 (1984).

Likewise, everyone knows that the teachings of references must be taken in the

context of the entire teaching of the reference when relying upon Section 103. See *In re Cotzab*, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

The point — claims as a whole and references as a whole — was well put in *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543, 551 (Fed. Cir. 1985), as follows:

Not only must the claimed invention as a whole be evaluated, but so also must the reference as a whole, so that their teachings are applied in the context of their significance to a technician at the time — a technician without our knowledge of the solution.

A notoriously well-known principle is that hindsight reconstruction — re-engineering — of prior art using applicant's teaching as the blueprint for the reconstruction is absolutely prohibited. See *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543, 547 (Fed. Cir. 1985) (“the invention must be viewed not with the blueprint drawn from the inventor, but in the state of the art that existed at the time”). It is also improper to propose obviousness when separate elements from the prior art are combined in the absence of some teaching or suggestion in the prior art that they should be combined. See *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997) (“It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art absent some teaching or suggestion, in the prior art, to combine the elements”).

Here, the Official Action attempts to select an interesting measurement from Robinson to import into Graf without the slightest reason to do so, except as the Official Action improperly relies upon applicant's teaching as the sole blueprint for doing so.

Robinson, in fact, is not analogous prior art and the measurement selected from Robinson (6 to 8 inches) is from a dock anchor that is completely foreign to applicant's claiming — an obvious arbitrary selection of a unit of measure from Robinson having no relationship to the distance between rails of a support assembly such as applicant's.

Here, the rejection advanced relies upon the selective extraction of isolated elements from the prior art and then the combination of them as taught by applicant, not the references.

In ascertaining the differences between the prior art and the claims at issue (i.e., the second *Graham* factor 86 SC 684; 148 USPQ 459), it is essential to view the claims at issue as "the invention as a whole", as required by Section 103. It is legally improper to focus on the obviousness of substitutions and differences between the claimed invention and the prior art rather than on the obviousness of the claimed invention as a whole relative to that prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1383, 231 USPQ 81, 93 (Fed. Cir. 1986), *cert. den.*, 480 US 947 (1987).

As the Federal Circuit has noted:

It is immaterial to the issue, however, that all of the elements were old in other contexts. What must be found obvious to defeat the patent is the claimed combination. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 1448, 223 USPQ 603, 609–10 (Fed. Cir. 1984).

In short, applicant submits that the combination of Graf and Robinson is improper in law. See *Sensonics, Inc. v. Aerosonic Corp.*, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996) ("to draw on hindsight knowledge of the patented invention, when the prior art does not

contain or suggest that knowledge, is to use the invention as a template for its own reconstruction — an illogical and inappropriate process by which to determine patentability").

Of course, combining Graf and Robinson is made without any reason, suggestion, or motivation to make that combination — and that combination itself does not lead to what applicant is claiming but rather destroys the teaching of Graf. A notable feature of applicant's claimed invention is the simplicity and extreme ease for movement of the entire ramp to any specific location along a shore line as most convenient in the view of the user. Absolutely nothing is known to be suggested in the prior art having any bearing on applicant's astonishing ramp portability and yet highly useful functional performance. *Cf. In re O'Keefe*, 40 CCPA 879, 202 F.2d 767, 97 USPQ 157, 161 (CCPA 1953, citing *Eibel Co. v. Paper Co.*, 261 US 45, and stressing patentability for a meritorious improvement in a crowded art).

The fundamental point is that the rejection based on Graf in view of Robinson is woefully unsound and lacking in foundation.

Accordingly, it is respectfully submitted that the rejection based on Graf in view of Robinson be withdrawn because it is improvident and improper.

Re Applicant's Claims 7 and 8

The Official Action is in error in alleging that Graf's 2 x 4 longitudinals are rails having any relationship whatsoever to applicant's rails which are critical parts of the watercraft supporting assembly of applicant. Graf's 2 x 4 longitudinals don't provide any support function. They simply serve as guides for a keel on keel rollers. See FIG. 5 of Graf

as a dramatic illustration of this point. Also, Graf has no suggestion for a shore end support assembly with a transverse footprint stabilizer bar resting on the earth and mounted in rigid relationship to the underside of rails. To create that out of whole cloth in reconstructing Graf is to destroy the utility that Graf emphasizes for his teaching.

Re Claim 9

Please recognize that claims must be construed as a whole and recognize that Graf's utility would be destroyed if his brackets 27 and rollers 28 were converted to elevational stubs between a stabilizer bar rigidly mounted to rails.

Re Claim 11

The allegation in the Official Action is puzzling. Graf's winch 29 is at the shore end of Graf's combination of three 2 x 4's including the 2 x 4 longitudinal 12. It is the opposite end (i.e., the water end) of the three 2 x 4's where Graf puts stabilizer 23. The important point, however, is that the totality of the applicant's claim 11, and also claim 12 (as applicant's original claim 11 has been put into two dependent claims to improve clarity), cannot even by the greatest imagination be suggested or motivated by the prior art.

Re Claims 2-5

These three claims are rejected on the improper combination of Graf in view of Robinson plus the additional reference of Slikkers (5,904,113).

A basic principle of patent law is that when a main claim defines patentable subject matter as applicant's claim 1 most definitely does in light of the lack of prior art that is

applicable to deny patentability to the claim, all dependent claims necessarily become allowable.

Here, the Official Action is based on a theory that Slikkers shows a keel roller that projects beyond the water end of a “rail” as well as upward above the water end of the “rail.” Reasoning for the rejection appears to be that it would be obvious to one of ordinary skill to combine the keel roller teaching of Slikkers to the assembly of Graf as improperly and worthlessly modified by Robinson. The reason given for this conclusion in the Official Action is that Graf teaches a roller located at the water end and Slikkers is a commonly used type of keel roller to facilitate loading of a watercraft onto a ramp.

What is significant is that Slikker does indeed show a keel roller that appears to project upward and possibly outward from adjacent structures.

But please let us look carefully at Graf, which the Official Action suggests needs modification by Slikkers’ keel roller. If Slikker’s keel roller were used on Graf, it would destroy Graf’s teaching. Graf’s keel rollers are recessed between — hidden between — Graf’s 2 x 4 longitudinals 11. How can one gain from the prior art a suggestion that Graf’s recessed and hidden keel rollers should suddenly project above their recessed condition. It boggles the mind how that could possibly be a useful modification of Graf. In short, Slikkers would destroy Graf’s teaching. The two are completely unrelated, and there is no indication anywhere serving to provide any motivation or desire or suggestion for the modification of Graf into an inoperable arrangement.

It is also noted, however, that in the Official Action, the argument is advanced that Slikkers has a keel roller that makes it obvious to one of ordinary skill to place any type of roller at any location. The fact is that Graf and Slikkers do not suggest rollers at any random location — and neither does applicant. Applicant specifically recites “the roller wheel at the end of each rail” in claim 2 — and that is a concept not suggested by Graf or Slikkers.

By claim 3, applicant requires that the distance between the underside of applicant’s rails and the underside of the applicant’s transverse footprint brace at the water end is less than the distance between the underside of applicant’s rails and the top of the roller wheels of applicant at the water end. Nothing is known from the prior art to suggest that relationship in a combination as claimed by applicant. It conflicts with Graf.

Applicant’s claim 4 recites that the distance between the underside of applicant’s rails and the underside of applicant’s transverse footprint base at the water end is less than the distance between the underside of applicant’s rails and the underside of applicant’s transverse footprint stabilizer bar at the shore end. The references do not teach or suggest a relationship in a combination as claimed by applicant. This feature is a significant one for applicant’s simplified ramp that can be easily ported and moved to different places along a shoreline without dismantling and with great convenience.

Regarding applicant’s claim 5, a keel roller is added as an element to make up the whole of applicant’s combination. Again, the whole of the claim distinguishes over the prior art.

The summary point is that there is no conceivable proper basis for rejecting any of applicant's claims using the combination of Graf with Robinson and Slikkers.

It is noted that the argument of design choice is asserted against applicant, but the foundation for that allegation is lacking from the comments of the Official Action. The merit of every detail of an applicant's claiming is set forth in applicant's specification. To allege that everything is a design choice is not only unfair but unsupportable as a foundational base for rejection.

Re Applicant's Claims 6 and 10

These claims are rejected as unpatentable over Graf in view of Robinson and further in view of Gibbs (6,273,016). Both of these claims deal with further details of the loading assembly and particularly the winch support beam mounted at the shore end at an upward angular relationship.

Gibbs teaches a technique for supporting watercraft over water and doesn't teach the slightest thing about pulling a watercraft out of water. Applicant, however, teaches a loading assembly at the shore end "for drawing a watercraft onto said watercraft supporting assembly," and that loading assembly includes a nonpivotably mounted beam, contrary to anything to be gleaned from Gibbs.

The Official Action calls Gibbs' "tongue 357" a "winch support beam 357". The Gibbs' "tongue 357" (beam in Official Action) is pivotable; see column 15, lines 46-49 of Gibbs. That suggests against calling a tongue 357 a "winch support beam". It is submitted

that to do so constitutes a mischaracterization of a prior art reference, contrary to law. Also, Gibbs has what he calls a “tongue stand 359”; and with respect to that tongue stand, Gibbs states “the tongue stand 359 provides support to maintain the tongue 357 above the surface flooring 14 (ground) of the body of water when not positively engaged with the watercraft 12.” See column 15, lines 55–57.

What Gibbs tries to do is simply put a watercraft into a partially supporting relationship while the frame of Gibbs is underwater and resting on the lake floor. Gibbs has no parallel rails and in fact only is used in the Official Action solely for its tongue 357, which is improperly called a “winch support beam” in the Official Action.

Basically, Gibbs is completely non-analogous prior art and provides no useful technology relevant to the issue of patentability for applicant’s claiming. Indeed, if one were to substitute Gibbs’ tongue 357 as a “winch support beam” into Graf, one would end up with a shiftable beam having no practical utility in the context of Graf’s teaching. Gibbs uses his tongue as an anchoring element, not as a winch support.

The most important point is that Gibbs is not analogous and not a proper prior art reference for a rejection against applicant’s claims.

Non-Analogous Art

The references Robinson and Gibbs are unequivocally non-analogous art.

The Court of Customs and Patent Appeals (CCPA) noted the following in *In re Wood*, 202 USPQ 171, 174 (CCPA 1979) :

The determination that a reference is from a non analogous art is therefore twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor is involved.

The Federal Circuit approved, adopted, and emphasized this two-prong analytical approach in *In re Clay*, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992), where the court held that a prior art gel treatment to get oil out of the ground was not analogous to the applicant's gel treatment to prevent loss of stored oil (i.e., liquid hydrocarbon).

The Robinson and Gibbs teachings deal with subject matter foreign to applicant's, and subject matter that leads away from applicant's astonishingly functional simplicity.

New Claims

Dependent new claim 13 is submitted as a further elucidation of the requirements in claim 9 and is supported at the bottom of page 16 of the specification.

Dependent new claim 14 is quite obviously supported by applicant's disclosure as set forth in the drawings of the application.

CONCLUSION

It is thus most respectfully submitted, in the light of the above remarks, that the claiming of this application is in condition for allowance.

And it is most respectfully requested that this application receive

Patent application, Serial No. 10/647,837
Attorney Docket No. 51449-00211

reconsideration and favorable action of allowance at an early date.

Respectfully submitted,



Date: 7 January 2005

Robert C. Baker
Attorney of Record
200 TCF Bank Building
12751 Nicollet Avenue
Burnsville, Minnesota 55337
Phone: (952) 882-9040
Fax: (952) 882-9038